UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL INC., COMEDY PARTNERS, COUNTRY MUSIC TELEVISION, INC., PARAMOUNT PICTURES CORPORATION, and BLACK ENTERTAINMENT TELEVISION LLC, Plaintiffs, vs. YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC., Defendants.	Case No. 1:07CV02103
THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED, BOURNE CO., et al., on behalf of themselves and all others similarly situated, Plaintiffs, vs. YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC., Defendants.	Case No. 07CV3582

DEPOSITION OF PATRICK WALKER

SAN FRANCISCO, CALIFORNIA

TUESDAY, JULY 22, 2008

REPORTED BY:

YVONNE FENNELLY, CRP, CSR NO. 5495

JOB NO. 15375

JULY 22, 2008

10:00 a.m.

VIDEOTAPED DEPOSITION OF PATRICK WALKER,

held at the offices of SHEARMAN & STERLING,

525 Market Street, San Francisco, California,

pursuant to notice, before YVONNE FENNELLY, CRP,

CSR License No. 5495.

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ALSO PRESENT: Lou Meadows, Videographer

--oOo--

10:10 a shake or a nod of the head, it will make for a clearer
10:10 record and help Ms. Fennelly out as she prepares the
10:10 transcript.
10:10 Does that all make sense to you?
10:10 A. Yes, it does.
10:10 Q. What is your present position of employment?
10:10 A. I'm the director of video partnerships for
10:10 Google and YouTube, based in London, England.
10:10 Q. And you say you're based in London, England.
10:10 Do your responsibilities as director of video
10:10 partnerships extend to a particular geographic area?
10:10 A. Yes. They extend to Europe, Middle East and
10:10 Africa.
10:10 Q. And how long have you had that position?
10:10 A. I'm been employed by Google since January of
10:10 2006 and took on responsibility for Google Video at the
10:11 time. At the time I was employed that extended to
10:11 YouTube after the acquisition at the end of 2006.
10:11 Q. That was Google's acquisition of YouTube?
10:11 A. That's correct.
10:11 Q. If you could briefly described your educational
10:11 background after high school, at least as that term, if
10:11 you're familiar, that is used in US jargon?
A. Yes. I went to the University of Southern

11:07 Q. Do you know if it was eventually commercialized, VIIV?

11:07 A. Not that I'm aware of.

11:07 Q. And you left in 2005 to go to Google, you said?

11:07 A. No. It was -- I gave my notice at the end of 2005. I began my role at Google in January -- I think January 16th, 2006.

11:07 Q. And I believe you testified that you were head of video content partnerships; is that right?

11:08 A. I was head of content partnerships here, in the Middle East, and Africa for Google when I was employed.

11:08 Q. You were at Middle East and Africa. I sometimes see the acronym EMEA; is that right?

11:08 A. That's correct.

11:08 Q. Were there other heads of content partnerships when you began in January 2006 for other geographic regions?

11:08 A. There was someone responsible for content partnerships in North America.

11:08 Q. Was that David Eun, E-u-n?

11:08 A. No; this was prior to Dave Eun joining Google. It was Jennifer Feiken.

11:09 Q. Did you report through -- up through the content, the head of content for North America or were

12:00 BY MR. SHAFTEL:

12:00 Q. Now, I want to get back, when you write that,

12:00 "I'm sure this is the tip of the iceberg" --

12:00 A. Uh-huh.

12:00 Q. -- did you follow-up with anyone at Google

12:00 Video to try to determine whether there was more to the

12:01 iceberg than these six items?

12:01 A. I remember having conversations about how we

12:01 were to deal with content that might be unauthorized on

12:01 the surface.

12:01 Q. I'm referring specifically here to Channel 4.

12:01 A. Uh-huh.

12:01 Q. Channel 4 said that there is some unauthorized

12:01 material.

12:01 In your mind, at this point you're writing,

12:01 "I'm sure this is the tip of the iceberg." And you

12:01 testified you understand the importance of controlling

12:01 content rights to the content owner.

12:01 A. Right.

12:01 Q. So I want to know what you recall doing, if

12:01 anything, to investigate how much more of the iceberg

12:01 there was beyond these six items.

12:01 MR. INGBER: Asked and answered.

THE WITNESS: I was interested in understanding

12:02 at this early time in particular how we were screening
12:02 for and then responding to content that might be
12:02 considered unauthorized.
12:02 BY MR. SHAFTEL:
12:02 Q. Tell me in, I guess, January of 2006, what
12:02 measures Google Video implemented to protect against
12:02 unauthorized copyrighted material appearing on the site?
12:02 MR. INGBER: Object to form; lacks foundation.
12:02 THE WITNESS: Can you rephrase that?
12:02 BY MR. SHAFTEL:
12:02 Q. Sure.
12:02 When you began at Google Video in the January
12:02 time period, a period when you wrote Exhibit 1 about
12:02 Channel 4's complaints, what did you understand Google
12:03 Video was doing to protect against unauthorized content
12:03 appearing on the Google Video site?
12:03 A. It was still quite early to my beginnings
12:03 there, and I had not spent time yet back in Mountain
12:03 View, but it was my understanding that for a variety of
12:03 reasons, including screening for adult material, violent
12:03 material, potentially unauthorized material, there was a
12:03 team that did review content before it was made live on
12:03 the site.
Q. Okay. So before content was available for

12:03 access on the Google Video site, human beings were
12:04 reviewing the content?
12:04 A. Human beings had a -- my understanding is they
12:04 had a view through thumbnail images of content that was
12:04 submitted that they would approve or reject prior to its
12:04 going live.
12:04 Q. Where were the individuals based?
12:04 A. At the time they were based in Mountain View,
12:04 California.
12:04 Q. You say, "at the time."
12:04 Did that change at any point in time?
12:04 A. At a later point in time there were people
12:04 employed in Dublin to also provide some review of
12:04 material.
12:04 Q. Do you know how many people in Mountain View --
12:04 Mountain View is the headquarters for Google; is that
12:04 right?
12:04 A. Correct.
12:04 Q. Do you know how many people were employed to
12:05 review thumbnail contents before it went live on the
12:05 site?
12:05 A. No, I don't know how many.
12:05 Q. Any rough magnitude? Fewer than 20, more than
20?

12:05 A. I think there were fewer than 20.
12:05 Q. Do you know how many hours a day content was
12:05 being reviewed as part of that process?
12:05 A. I recall it was a certain number of people's
12:05 full-time job to review the content, and that was
12:05 primarily done during working hours.
12:05 Q. And the number of those individuals you're not
12:05 sure about?
12:05 A. I'm not sure how many there were.
12:05 Q. And you testified that that team was expanded
12:05 to include individuals in Dublin; is that right?
12:05 A. Correct.
12:05 Q. Dublin, Ireland; is that right?
12:06 A. That's right.
12:06 Q. And when and why is that?
12:06 A. I don't remember the exact date, but it was
12:06 done in anticipation of our localization of Google Video
12:06 to Europe.
12:06 Q. Meaning there would be sites in Europe that
12:06 would have content specific for the given geographic
12:06 location?
12:06 A. We had a plan, and one of my responsibilities
12:06 was to help develop this plan, to localize Google Video
in several European countries. And my responsibility

12:06 was specifically to make sure that we were engaging with
12:06 content partners in all of these markets. And as part
12:06 of that, we employed people, or I would say maybe
12:06 reassigned people, because there was already a large
12:06 team of people in Dublin for Google operations, to be
12:06 trained on the tools in languages that were specific to
12:06 the countries in which we would launch.
12:07 Q. And, in fact, in the spring of '06 you --
12:07 "you," meaning Google Video -- hired three individuals
12:07 to work in Dublin; is that right?
12:07 A. I don't know how many were hired. I was not
12:07 responsible for operations. I know that people were
12:07 employed.
12:07 Q. Would these individuals in Dublin be known as
12:07 the Dublin vidiots?
12:07 A. That was the term we used, vidiots.
12:07 Q. Who was the team in the US? Do you know who
12:07 was in charge of supervising and overseeing that team?
12:07 A. I believe it was Bhanu.
12:07 Q. Do you know how long -- do you know -- did you
12:07 ask about any statistics, how many videos they -- and
12:07 let's focus on '06 up through the YouTube acquisition.
12:07 A. Okay.
Q. Did you ask about any statistics, how many

videos those individuals would review, how long it would take between uploading and the review process?

MR. INGBER: Objection.

THE WITNESS: I remember having that conversation. I have no idea what the actual numbers were at this time. I do know there was quite a lag, though, between upload and going live, which was due to this review process.

BY MR. SHAFTEL:

Q. And when you say a lag, what magnitude of time period are you talking about? A couple hours, couple of days?

A. I think depending on the time of the week, it could be a couple hours, it could be a couple days. After the weekend it would take -- I think things would build up on the weekend and they would have to then review a larger collection of videos prior to them being made live. This was a constant complaint for users, actually, that there was a large lag.

You would upload something and it would go into this, from their perspective, kind of silent period of is it going live or not, and then it would appear or not.

Q. You testified that you didn't know the number

12:09 of individuals in Dublin that were reviewing videos
12:09 beginning in the spring of '06; is that right?
12:09 A. I don't know exactly how many people were
12:09 employed.
12:09 Q. I had suggested three.
12:09 Does that number seem incorrect to you?
12:09 A. It seems to be in the range.
12:09 Remember, I mean, Google was growing very
12:09 quickly. When I was employed, there were 4,000
12:09 employees. Now there is probably 20,000 employees. So
12:09 even if I were to pinpoint a specific time, you know, it
12:09 might have been different the week after. But I think
12:09 that number is in the range.
12:09 Q. Now, you said you weren't in charge of
12:09 operations. Who was in charge of the Dublin operations?
12:09 A. There was someone named William Kipp who was
12:09 overseeing a number of the operations there, and he had
12:09 someone on his team named Toffi Dawson who was
12:09 specifically working with that team.
12:09 Q. Do you know the training that -- do you know
12:10 the training that either the reviewers in Mountain View
12:10 or the reviewers in Dublin received with respect to
12:10 copyright issues?
A. I don't know the training specifically. I know

12:10 they did receive training.

12:10 It was -- it was, in my understanding, part of a broader training as to things to look out for in looking at thumbnails that might be against our policies, violent, pornographic, or potentially -- to some extent, potentially unauthorized content.

12:10 Q. And what do you understand the reviewers to have relied on -- or strike that.

12:11 How do you understand the reviewers would go about determining whether certain content appeared to violate copyright or not?

12:11 MR. INGBER: Object to form.

12:11 THE WITNESS: Can you rephrase that, please?

12:11 BY MR. SHAFTEL:

12:11 Q. Sure.

12:11 You said that they reviewed thumbnails of content?

12:11 A. Yes.

12:11 Q. What do you mean by "thumbnails," just to have it on the record.

12:11 A. I went to have a look one time, and what I recall is that on a screen there would be a series of thumbnails that would be representative of the video. They wouldn't actually watch the video; they would see a

12:11 series of thumbnails that would be representative of
12:11 videos across the length of that video. The number of
12:11 thumbnails, I think, was the same regardless of whether
12:11 the video was a minute long or ten minutes long or
12:11 however long, and they would, from my understanding, be
12:11 trained to look out for things that were obviously very
12:11 easy to identify such as, you know, pornographic
12:11 material or scenes of violence.
12:11 If there was a question as to whether or not it
12:11 was against our policies, then it would be passed to
12:11 another bucket for review.
12:12 With regard to potentially unauthorized
12:12 content, it was very spotty. It was interesting. One
12:12 of my concerns at the beginning was that it was quite US
12:12 centric, and I understand that they were looking for
12:12 certain things that were popular programs from US
12:12 broadcasters.
12:12 MR. SHAFTEL: We'll mark the next document as
12:12 Exhibit 2, Walker exhibit that starts at G154578.
12:12 (Document marked Exhibit No. 2
12:12 for identification.)
12:13 THE WITNESS: Thank you.
12:13 BY MR. SHAFTEL:
Q. I'd ask, Mr. Walker, if you could review that

12:32 Bates No. 313442.

12:32 (Document marked Exhibit No. 3

12:33 for identification.)

12:33 BY MR. SHAFTEL:

12:33 Q. I'd ask, Mr. Walker, for you to review this

12:33 document, and I have a few questions about it. It's

12:33 actually two e-mails that appear on this page.

12:34 Mr. Anderson writes to you on Sunday,

12:34 March 5th, 2006 -- first off, who is Ethan Anderson?

12:34 A. International business product manager. So he

12:34 was the international product manager on Google Video.

12:34 Q. What in essence does the international product

12:34 manager do? What areas fall within that person's

12:34 responsibilities?

12:34 A. The international products manager was

12:34 responsible for the development of the product for the

12:34 purposes of localization, in this case, in Europe. But

12:34 he was also looking after the international development

12:34 plan of the product as a whole.

12:34 Q. And as head of content partnership, you were

12:35 trying to -- your responsibilities involved finding

12:35 counterparty content holders to provide content for

12:35 these local sites, European sites?

A. Right. The content, when it was submitted,

quite -- it's a description that's quite technical. I don't know at the time what that was specifically referring to.

We were looking for ways to create a more automated process by which we could detect content that would help in the review process.

Q. And did anything happen in this respect over the next one to three months that you're aware of, April, May, June or thereabouts in 2006?

A. I don't recall.

(Document marked Exhibit No. 9 for identification.)

BY MR. SHAFTEL:

Q. Exhibit 9, Document 313463, the bottom portion of which, Mr. Walker, is an e-mail from you to Hunter Walk.

A. Uh-huh.

Q. In what position did Mr. Walk have at this point, March 11, 2006?

A. He was one of the product managers at Google Video.

Q. What responsibilities did he have?

A. He was responsible for a number of developments on the product, including the tools for review of

content.

Q. Do you know whether he reported to Mr. Anderson or vice versa?

A. No, he did not report to Mr. Anderson or vice versa.

Q. Do you know who Mr. Walk reported to?

A. I don't know who he reported to at the time.

Q. Where was he based?

A. Mountain View.

Q. And you're providing Mr. Walk here a list of certain sports-related information, including e-mail addresses; is that right?

A. I'm sorry?

Q. You're providing Mr. Walk certain sports-related information concerning the names, the e-mail, the websites for various sports entities; is that right?

A. This is a list of various sports names and website URL's.

Q. How come you're providing it to Mr. Walk?

MR. INGBER: Take your time to review the document.

THE WITNESS: This was part of a process when we were looking to provide a means of matching based on

competitor of Google Video?

MR. INGBER: Object to form to the extent it mischaracterizes Mr. Walker's testimony.

BY MS. MAGUIRE:

Q. Was YouTube a primary competitor?

A. YouTube --

MR. INGBER: Object to form. The word "primary" is vague.

THE WITNESS: I never said YouTube was a primary competitor.

I thought certain aspects of what YouTube did was competitive to our platform particularly as a place for people to submit and share video content.

BY MS. MAGUIRE:

Q. Okay.

Given that, that YouTube was a competitor of Google Video --

MR. INGBER: Objection.

Hold on. That mischaracterizes the witness' testimony.

BY MS. MAGUIRE:

Q. Was YouTube a competitor of Google Video?

A. I think I just answered that. There were aspects of what they did that were competitive.